

the service provider took possession of the equipment, but not earlier than the beginning of the funding year."

Spectrum appeals the determination by the SLD that the valuation date should be the date the service provider took possession of the equipment, but no earlier than the beginning of the funding year.

Pages 5 through 22 of the Disbursed Funds Recovery Letter reach a determination of the value of the trade-in equipment on July 1, 1999 for each of the FRNs. Specifically, for each of the FRNs, pages 5 through 22 state the following:

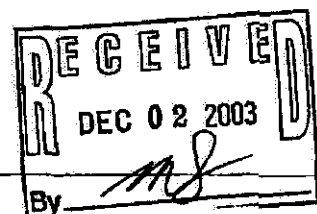
"The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only *(amount varies by FRN)*, which is *(amount varies by FRN)* less than the non-discounted share of *(amount varies by FRN)* that the applicant was obligated to pay."

Spectrum appeals the determination by the SLD that the actual fair market value of the equipment on July 1, 1999 was the value indicated in the independent appraisal.

### III. ARGUMENT

The SLD has determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year or, in this case, July 1, 1999. Further, the SLD has relied upon an independent appraisal Spectrum provided in order to determine the value of the equipment on July 1, 1999. These determinations are misguided and the SLD should cease its attempt to recover funds disbursed pursuant to the FRNs.

Firstly, any agreement that contemplates an equipment trade-in in lieu of cash must assign a value to the equipment at the time of contract formation - not at a later date. Otherwise, the applicant will not know its payment obligations under the agreement. Furthermore, for

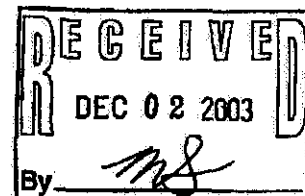


Funding Year 1999-2000, the SLD required an applicant to enter an agreement and file a Form 471 by April 6, 1999. As a result, it was impossible for RCOE and Spectrum to value the equipment at the start of the funding year (July 1, 1999) and still comply with the SLD's requirement that the agreement be formed and the Form 471 be filed by April 6, 1999.

Secondly, it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule or FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003 - four years after the transaction.

Thirdly, although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the Disbursed Funds Recovery Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first-hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

Lastly, if funds were, in fact, erroneously disbursed as a result of the use of an incorrect valuation date, the appropriate remedy is to require RCOE to pay Spectrum the corresponding non-discounted portion because this is what would have been required at the time of transaction had the parties known the correct valuation date. Alternatively, the SLD should seek full recovery from the applicant alone because recovery from Spectrum will result in RCOE having paid less than its required matching portion - a clear rule violation and an abuse of the E-Rate Discount Mechanism.

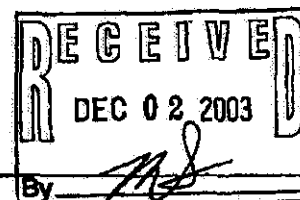


**A. THE APPROPRIATE VALUATION DATE IS THE DATE THE PARTIES ENTERED INTO AN AGREEMENT FOR SERVICES - NOT THE DATE THE SERVICE PROVIDER TOOK POSSESSION OF THE EQUIPMENT OR, IN THIS CASE, JULY 1, 1999.**

The E-Rate program rules require the service provider and the applicant to enter into an agreement before the Form 471 is filed. This agreement necessarily establishes the type and amount of consideration to be paid for the goods and services purchased. Consequently, any agreement that contemplates the trade-in of equipment in lieu of a cash payment must assign a value to the equipment at the time of contract formation - not at a later date. Otherwise, the parties will have no way of determining the actual price in the contract and the validity of the contract would be in doubt. For this reason alone, the appropriate valuation date could not be July 1, 1999 or, alternatively, the date Spectrum took possession of the equipment.

Furthermore, the SLD's Funding Year 1999-2000 requirement that the applicant enter an agreement with the service provider and file Form 471 by April 6, 1999 made it impossible for RCOE and Spectrum to value the equipment at the start of the funding year (July 1, 1999) and still comply with the requirement that the agreement be formed and the Form 471 be filed by April 6, 1999. The agreement between RCOE and Spectrum necessarily defined the type and amount of consideration RCOE was required to pay and, therefore, had to assign a value to the trade-in equipment. If the parties had waited until the start of the funding year (July 1) to value the equipment, RCOE would have missed the deadline for filing its Form 471.

After carefully considering the type, amount and condition of the equipment held by the RCOE consortium, Spectrum developed a proposal that would enable the consortium members to meet their technology plan objectives while, at the same time, avoid a cash outlay. RCOE reviewed this proposal and found it to be the most cost-effective response to its Form 470. However, before agreeing to hire Spectrum, RCOE and/or its consortium members were required

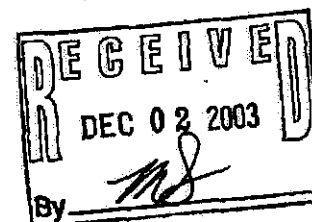


to obtain board approval of the proposed contract with Spectrum. It would have been impossible for RCOE and its member districts to have obtained board approval without first describing in detail the purchase price and the terms (including the amount of cash required) of the agreement. Consequently, the parties had to value the equipment at the time they reached an agreement.

**B. IT IS UNFAIR TO SEEK RECOVERY FOR THIS MATTER BECAUSE NO RULE OR GUIDANCE REGARDING TRADE-IN VALUATIONS EXISTED EITHER AT THE TIME THE PARTIES ENTERED INTO THE AGREEMENT OR ON JULY 1, 1999.**

It is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule or FCC guidance on this issue existed at the time the transaction occurred. As evidenced by a March 3, 2003 email from Ed Falkowitz of the SLD to John Price, CFO of Spectrum, neither Spectrum nor the SLD learned of any guidance on this issue until *four* years after RCOE and Spectrum reached their agreement. At the time RCOE and Spectrum reached their agreement most of the rules or guidance surrounding trade-in equipment addressed the issues of the original source of funds for the equipment and its fair market value in general. Specifically, the rules required equipment to be traded in at its fair market value and prohibited a trade-in of equipment that was purchased with E-Rate funds. The rules were silent, however, on which date the fair market value should be assessed.

The guidance provided in the March 3, 2003 email from Ed Falkowitz announces a new policy of which neither RCOE, Spectrum, nor the SLD were aware. If the entity charged with administering the program and preventing waste, fraud and abuse did not anticipate the need for guidance on this issue when it contemplated allowing trade-ins, it is certainly unfair to expect the applicant and the service provider to have done so. Between the SLD, RCOE and Spectrum, the SLD should bear the risk of the consequences of a new policy since it has the exclusive responsibility of administering the program.

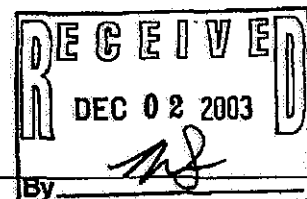


Moreover, it is unfair for a program participant, exercising good faith and complying with all applicable rules, to be penalized for acting reasonably under the circumstances. However, Spectrum will be penalized for acting reasonably if this appeal is not granted. For the reasons discussed above, it would have been entirely unreasonable to assume the valuation date to be any date other than the date the parties reached an agreement. This is particularly true in the absence, as here, of an SLD rule or FCC guidance on which date is the appropriate for equipment valuations. Consequently, RCOE and Spectrum had no other recourse but to reasonably assume the equipment should be valued at the time the agreement is formed.

Lastly, USAC's role of preventing waste, fraud and abuse in the program is severely undermined if program participants are penalized for acting reasonably in the absence of a clear rule or guidance on an issue. USAC should encourage participants to act reasonably and in good faith whenever the rules are silent on a particular issue. To do otherwise is to encourage waste, fraud and abuse.

**C. THE ACTUAL FAIR MARKET VALUE OF THE TRADE-IN EQUIPMENT ON JULY 1, 1999, WAS NOT THE AMOUNT INDICATED IN THE APPRAISAL, BUT RATHER THE AMOUNT SPECTRUM ACTUALLY DETERMINED IT TO BE.**

The appraisal which values the equipment at \$1,316,159 as of July 1, 1999, is not more authoritative than Spectrum's opinion of the value. Unlike the appraiser who compiled the report, Spectrum (i) had actually sold and installed the specific pieces of equipment at issue, (ii) was knowledgeable about the manner in which the equipment had been used and maintained, (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment, and (iv) most importantly, knowledgeable about the identity and needs of potential buyers of the specific pieces of equipment in question. As a result of this additional knowledge which the appraiser lacked, Spectrum's opinion on the value of the equipment at issue is



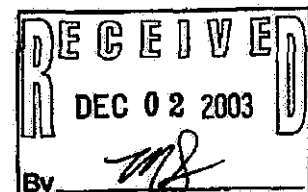
inherently more reliable than an appraiser's opinion formed four years after Spectrum's opinion. Each of the aforementioned facts within Spectrum's knowledge caused Spectrum to value the equipment more highly than a party without these facts might. For these reasons, USAC should defer to Spectrum's assessment of the equipment's value.

**D. IF FUNDS WERE ERRONEOUSLY DISBURSED, THE APPROPRIATE REMEDY IS AN INCREASE IN THE NON-DISCOUNTED PORTION THE APPLICANT IS REQUIRED TO PAY OR, ALTERNATIVELY, FULL RECOVERY FROM THE APPLICANT OF THE ERRONEOUSLY DISBURSED AMOUNT.**

If funds were, in fact, erroneously disbursed as a result of the use of an incorrect valuation date, the appropriate remedy is to require the applicant to pay Spectrum the corresponding non-discounted portion because this is what would have been required at the time of the transaction had the parties known the appropriate valuation date. Given the absence of bad faith by both RCOE and Spectrum, no purpose is served by imposing the harsh penalty of a full recovery against Spectrum. Instead, the SLD should seek to obtain the result that would have occurred had a clear rule defining the appropriate valuation date been in place at the time the parties reached their agreement. Therefore, the SLD should require RCOE to pay Spectrum matching funds that are appropriate for the amount of E-Rate funds actually disbursed.

Furthermore, Spectrum did not receive USAC's final determination of the amount that RCOE failed to pay for the non-discounted services until Spectrum received the Disbursed Funds Recovery Letter dated October 3, 2003. Spectrum has sent RCOE the attached invoice for the remaining matching funds. In the event USAC determines funds were erroneously disbursed, RCOE should immediately be given an opportunity to pay the invoice from Spectrum.

Alternatively, if USAC denies RCOE the opportunity to pay for the remaining non-discounted services, USAC should seek the entire recovery from RCOE because recovery from



Spectrum will result in RCOE having paid less than its required matching portion - a clear rule violation and an abuse of the E-Rate program. RCOE received all of the services for which it contracted. Consequently, it should pay the full contract price, less any E-Rate discounts to which it is actually entitled. If the SLD recovers disbursed funds from Spectrum, Spectrum will have provided all of the services it was obligated to provide, but Spectrum will receive only a portion of the price it legally and reasonably charged for those services. This unreasonable and unfair result will undermine the integrity of the program.

#### IV. CONCLUSION

Based on the foregoing, USAC should immediately reverse its determination that E-Rate funds were erroneously disbursed to RCOE for funding year 1999-2000.

Respectfully submitted,

**SPECTRUM COMMUNICATIONS  
CABLING SERVICES, INC. D/B/A/  
SPECTRUM COMMUNICATIONS**

By:   
Pierre F. Pendergrass

Its: General Counsel

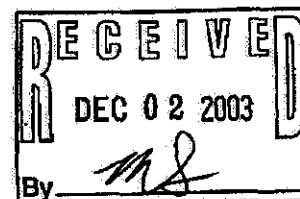
Date: December 2, 2003

#### Attachments (3)

SLD website announcement regarding deadline for Form 471 for funding year 1999-2000

Email from Ed Falkowitz dated March 17, 2003

Invoice from Spectrum to RCOE dated December 2, 2003



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[Home](#)   [High Cost](#)   [Low Income](#)   [Rural Health Care](#)
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[Provider Forms](#)

## February 1999 Announcements

Please click on the topic below to view the most recent announcements:

- [Wave 10 is the End! Final Wave of Funding Commitments Available](#) (2/27/1999)
- [New Search Function! Service Provider Information by SPIN](#) (2/24/1999)
- [Wave 9 Recipients of E-rate Funding](#) (2/20/1999)
- [Form 471 Minimum Processing Standards](#) (2/20/1999)
- [10 BEAR Form Tips](#) (2/12/1999)
- [Fact Sheet on Library Consortia](#) (2/10/1999)
- [New! Type-In / Print-Out Your Form 486](#) (2/5/1999)
- [Application Window Extended to April 6, 1999](#) (2/3/1999)
- [Wave 7 Recipients of E-rate Funding](#) (2/3/1999)
- [More Waves to Come!](#) (2/3/1999)
- [What's New Archives...](#)

### Wave 10 is the End! Final Wave of Funding Commitments Available (2/27/1999) [Top of Page](#)

The Schools and Libraries Division has issued its final wave of funding commitment decisions for the 1998 program year. This final wave means:

- Funding commitment decision letters will go to the 6% of in-the-window applicants who had not yet received a decision from us. Information about these funding commitments is now posted on this Web Site ([www.sl.universalservice.org/reference/fndcommit.asp](http://www.sl.universalservice.org/reference/fndcommit.asp)), and applicants should receive their letters during the following week.
- Letters will also go out to those applicants whose internal connections requests were deemed "as yet unfunded" until this wave. Approved internal connections requests at the 70% discount level and above will be funded; we will NOT have funds to accommodate internal connections requests at or below 69% discount.
- We now know definitively that we will NOT be able to consider for funding any applications received outside the 75-day window. These applicants will be notified



#### Apply Online

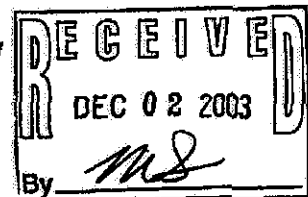
- Reference Area
- Appeals
- Eligible Service List
- Changes & Corrections
- Suspensions & Debarments
- Waste, Fraud, Abuse Task Force

#### Search Tips

#### Submit a Question

- Contact Us
- Whistleblower Hotline - Rape, Waste, Fraud, Abuse

- Site Map
- Site Tour
- Website Policy





soon of our regrets in this regard.

- Special note: If you filed a 1998 application but have not had ANY response from SLD through this final Wave 10, watch the Web Site for instructions on how to proceed with an inquiry about your application.

Congratulations to the tens of thousands of trailblazing schools, libraries, and consortia who are now celebrating their well-deserved Year One E-rate successes. We know you will inspire your colleagues who have not yet been reached by the E-rate, and we look forward to serving both veterans and newcomers in Year Two. But both must act quickly: the deadline for all Year Two applications is fast approaching. We strongly recommend that you file your Form 470 so that it is posted on the SLD Web Site no later than March 5, 1999. Keep the E-rate flowing for your school or library - file Form 470 today!

**New Search Function! Service Provider Information by SPIN** (2/24/1999) [Top of Page](#)

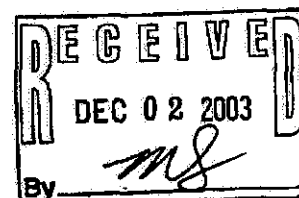
The SLD has added a new search function to the Provider Area. This "Service Provider Information by SPIN" search provides service providers with important information regarding the "post-commitment" phase of the funding process, including:

- Status of the certification of service provider's SPIN
- Percentage of FRNs for which this company received a FCDL per Wave
- Dates Form 486 Notification letters sent to service provider's SPIN
- Dates BEAR (Billed Entity Applicant Reimbursement) letters sent to service provider's SPIN

**Wave 9 Recipients of E-rate Funding** (2/20/1999) [Top of Page](#)

Click here to download state reports on the Funding Commitment Decisions in Wave Nine, the largest wave of letters released to date. This Wave consists of approximately 3700 funding commitment decisions letters totaling \$323 million in E-rate funds. The Wave Nine release pushes the total dollars committed to over \$1.4 billion, covers 94% of applicants who filed within the E-rate application window, and, for the first time, extends funding to cover internal connections requests for applicants who qualify for a discount level as low as 70%.

**Form 470 Minimum Procession Standards** [Top of Page](#)



**Form 472 & Minimum Processing Standards** [Top of Page](#)  
(2/20/1999)

Minimum Processing Standards are the procedures that the SLD uses to review your application when we first receive it. Your application must pass the Minimum Processing Standards in order for us to begin entering your application into our data system. [Click here for Minimum Processing Standards.](#)

**10 BEAR Form Tips** (2/12/1999)[Top of Page](#)

If you are among the thousands of E-rate applicants receiving a funding commitment decisions letter in Wave 8 (in the mail now) or Wave 9 (scheduled for next week), you may be preparing to file a Billed Entity Applicant Reimbursement (BEAR) Form for the first time. Officially known as FCC Form 472, the BEAR Form is the tool you use to request reimbursement for E-rate discounts on approved services you've already paid for. The BEAR Form comes with your funding commitment letter; it's also available on the Schools and Libraries Division Web Site ([www.sl.universalservice.org](http://www.sl.universalservice.org)) as a downloadable PDF file and as a type-in/print out form.

[Click here to read some reminders about how the BEAR process works-and some tips to make it work well for you.](#)

**Fact Sheet on Library Consortia** (2/10/1999)[Top of Page](#)

The Form 470 Guidance Section in the Reference Area now features a Fact Sheet on Library Consortia.

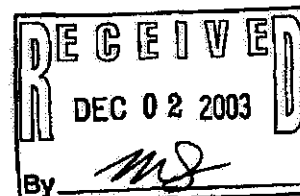
**New! Type-In / Print-Out Your Form 486**  
(2/5/1999)[Top of Page](#)

The SLD has created a new application tool: a version of the Form 486 that you can download from this Web Site, fill in on your computer, print out, and mail to us. This Form 486 is virtually identical to the PDF (Portable Document Format) file that has been available on our Web Site, but now you can enter information directly into the form rather than just printing out a blank hard copy and then filling out the form by hand.

**Type-In/Print Out Form 486**

**Please note:** This form does NOT electronically transmit data to the SLD, but instead makes your completion of the paper form easier and neater.

You must have Adobe's free Acrobat Reader 3.01 installed on your computer in order to access the Form 486. [Click here for information on obtaining this software, as well as specific instructions for downloading the Form 486 from this Web](#)



Site.

Please read SLD's "Helpful Hints" for using the new **Type-In and Print-Out Forms 470, 471 and 486**.

**Application Window Extended to April 6, 1999 (2/3/1999)** Top of Page

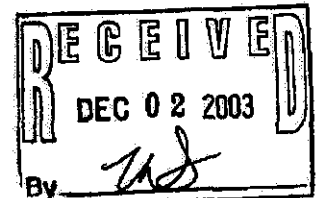
To give you more time to prepare your 1999-2000 E-rate application, and to increase the chances that you'll have heard a decision on your 1998 application before you need to apply for Year 2, the Schools and Libraries Division (SLD) of the Schools & Libraries (USAC) has officially extended the closing date of the Year 2 application window to 11:59 p.m. ET on April 6, 1999.

In order to be considered "in the window," you must file Form 470, wait 28 days, and then file Form 471 so that your entire application, including all paper attachments and certifications, is received by SLD by 11:59 ET on April 6. Technically, this means that the last day to file Form 470 and complete the rest of the process within the window is March 9—but you would have to sign any new contracts, complete and sign Form 471, and hand-deliver it to the SLD office in Lawrence, Kansas all on April 6 if you waited that long to file Form 470. **WE STRONGLY RECOMMEND THAT YOU FILE YOUR FORM 470 NO LATER THAN MARCH 5, 1999.** Click here to begin filling out your Form 470 online.

The previous recommended Form 470 filing date was February 5 for a window closing date of March 11.

While this window extension gives you almost a month more to start and complete your Year 2 application, we urge you to begin filing as soon as possible. If you file your Form 470 now, you will:

- Avoid the heaviest traffic on our Web site ([www.sl.universalservice.org](http://www.sl.universalservice.org)) and customer service line (888/203-8100).
- Give our data entry staff the opportunity to contact you to resolve any problems with your paper applications.
- Allow yourself adequate time to complete your competitive bidding process and prepare your Form 471 with care.
- Be among the early Form 471 applicants to be reviewed and acted upon as we move toward funding commitments for 1999-2000.
- Observe the Passover and Easter holidays that immediately precede the April 6 deadline without



having to worry about rushing your Form 471 application and attachments into overnight mail on Monday, April 5.

For help filing your Form 470 in a timely fashion, please see "Top 10 Reasons You Should File Your Year 2 E-Rate Application NOW" (at [www.sl.universalservice.org](http://www.sl.universalservice.org) or via fax-on-demand, 800-959-0733, document #206) and the forthcoming "Quick Tips for Filing Your Form 470 - Even If You Don't Have a 1998 Funding Letter Yet."

**Wave 7 Recipients of E-rate Funding**  
(2/3/1999)

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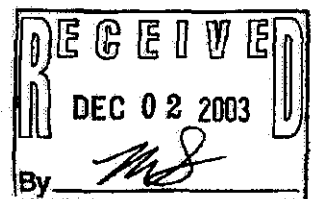
Click here to download state reports on the Funding Commitment Decisions in Wave Seven. This Wave consists of 1,500 funding commitment decisions letters totaling \$140 million in E-rate funds. The average commitment in this wave is over \$93,300 per applicant.

**More Waves to Come! (2/3/1999)**

[Top of Page](#)

With the Wave 7 commitments plus the number of applicants notified that their requests could not be funded (due to ineligible services or internal connections below the discount threshold), SLD has responded to more than two-thirds of its 1998 in-the-window applicants. Approximately \$760 million has been committed through Wave Seven, or about 40% of the available funding.

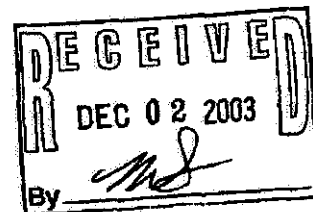
Wave Seven is NOT the last wave of E-rate funding commitments for the year. It will be followed by two to four additional waves before the process is concluded. While we had hoped to make the vast majority of commitments by the end of January, and worked diligently to do so, we are also committed to providing detailed review of each application for compliance with program rules, as we agreed to do in the course of our audits by both the General Accounting Office and PricewaterhouseCoopers. We are completing our final review of each application as quickly as we can without sacrificing assurance of program integrity, and have continued to add staff resources to expedite the overall review process.



Please watch the SLD Web Site ([www.sl.universalservice.org](http://www.sl.universalservice.org)) and our Newsflash distribution for more information about the schedule of upcoming funding commitments. We are also encouraging all current and potential E-rate applicants to get their 1999-2000 Form 470 in as soon as possible to begin the E-rate process for Year 2.

Content Last Modified: June 24, 2003

Need help? You can contact us toll free at 1-888-203-8100.  
Our hours of operation are 8AM to 8PM, Eastern Time, Monday through Friday.  
Aware of fraud, waste, and abuse, report it to our Whistleblower Hotline!



Price, John

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From: Ed Falkowitz [efalkowitz@universalservice.org]  
Sent: Monday, March 17, 2003 11:13 AM  
To: jprice@spectrumccsl.com  
Cc: Philip Glesler; George McDonald  
Subject: Riverside Trade In

John,

Based on the equipment appraisal I have revised my analysis of the refund due SLD. I would appreciate it if you would review the attached and let me know if you see any logical or numerical errors.

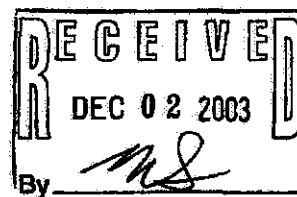
Additionally, we discussed the following issues in regard to the appraisal.

1. The original cost was less than the 3/1/99 value. You explained that this occurred because the original purchase was on a bulk contract with a substantial discount. The appraisal is based on the fair market value for a single piece of equipment to a commercial customer.

2. The value for the WS-C1912A increased between 3/1/99 and 7/1/99. You indicated this was just a result for increased demand for the part.

You indicated that you asked these same questions of the appraiser and he gave you the explanation above.

Please reply to this email to confirm my account of our conversation.



10/14/2003

Appendix III  
Analysis of Trade In received by Spectrum  
Riverside County (BEN 143743)  
BEN 143743, Form 471 #148308

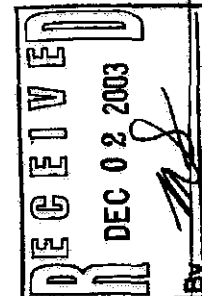
Quantity Traded-In

FRN#	Amount Paid	Amount Approved	Sched	Discount	Non-Discounted Portion	5000	Other	Trade-In Value	Paid in Cash	Total Payments by Applicant	Maximum Commitment Amount	Refund Due
299371	\$190,018.55	\$190,018.55	Alford	67	\$93,591.23	2	27	\$ 77,265.18		\$ 77,265.18	\$ 158,871.73	\$ 33,148.82
299376	\$103,272.47	\$103,272.47	Banning	67	\$80,865.54	1	15	\$ 40,862.93		\$ 40,862.93	\$ 82,558.07	\$ 20,714.40
299375	\$62,254.87	\$62,254.87	Beaumont	67	\$45,438.97			\$ -	\$ 45,438.89	\$ 45,438.89	\$ 82,254.31	\$ 0.56
299374	\$174,888.18	\$174,888.18	Caschella	67	\$96,137.58			\$ -	\$ 86,137.92	\$ 86,137.92	\$ 174,888.08	\$ 0.08
299358	\$335,988.71	\$335,988.71	Corona Norco	67	\$185,478.14	4	48	\$ 143,701.89		\$ 143,701.89	\$ 291,758.38	\$ 44,236.33
299389	\$16,528.39	\$16,528.39	Desert Center	67	\$8,139.85			\$ -	\$ 8,139.87	\$ 8,139.87	\$ 16,528.40	\$ -
299370	\$313,931.52	\$313,931.52	Desert Sands	67	\$154,522.99	4	42	\$ 138,287.85		\$ 138,287.85	\$ 280,785.84	\$ 33,165.68
299385	\$212,053.73	\$212,053.73	Hemet	67	\$104,444.37	2	31	\$ 82,878.41		\$ 82,878.41	\$ 167,884.27	\$ 44,189.46
299372	\$217,562.53	\$217,562.53	Jurupa	67	\$107,157.08	1	14	\$ 39,309.37		\$ 39,309.37	\$ 79,808.93	\$ 137,752.60
299373	\$184,609.75	\$184,609.75	Lake Elsinore	67	\$99,577.94	2	28	\$ 75,911.82		\$ 75,911.82	\$ 154,123.59	\$ 30,386.16
299387	\$44,070.38	\$44,070.38	Marina	67	\$21,708.31	0	8	\$ 10,828.47		\$ 10,828.47	\$ 21,985.08	\$ 22,085.30
299382	\$385,188.80	\$385,188.80	Moreno Valley	67	\$194,635.34	5	63	\$ 173,536.34		\$ 173,536.34	\$ 352,331.37	\$ 42,837.43
299381	\$125,307.85	\$125,307.85	Murietta	67	\$61,718.89	1	39	\$ 73,148.34		\$ 73,148.34	\$ 148,513.30	\$ -
299384	\$33,052.78	\$33,052.78	Norview	67	\$18,279.73			\$ -	\$ 16,279.73	\$ 16,279.73	\$ 33,052.79	\$ -
299383	\$173,482.15	\$173,482.15	Palm Springs	67	\$85,451.36	2	24	\$ 73,204.50		\$ 73,204.50	\$ 148,827.32	\$ 24,884.83
299383	\$66,748.08	\$66,748.08	Palo Verde	67	\$42,725.88	1	32	\$ 63,673.43		\$ 63,673.43	\$ 129,278.35	\$ -
299378	\$44,070.38	\$44,070.38	Perris Elementary	67	\$21,708.31	0	8	\$ 10,828.47		\$ 10,828.47	\$ 21,985.08	\$ 22,085.30
299377	\$66,748.08	\$66,748.08	Perris High	67	\$42,725.88			\$ -		\$ -	\$ -	\$ 86,748.08
299353	\$248,431.28	\$248,431.28	Riverside USD	67	\$121,378.08	5	28	\$ 138,990.26		\$ 138,990.26	\$ 278,131.73	\$ -
299388	\$38,581.58	\$38,581.58	Romoland	67	\$18,983.02	0	7	\$ 9,474.91		\$ 9,474.91	\$ 19,238.94	\$ 19,324.64
299359	\$75,728.49	\$75,728.49	San Jacinto	67	\$37,289.11			\$ -		\$ -	\$ -	\$ 75,728.49
299379	\$179,000.95	\$179,000.95	Temecula	67	\$89,194.85	2	25	\$ 74,558.08		\$ 74,558.08	\$ 181,378.46	\$ 27,622.49
299381	\$312,605.70	\$312,605.70	Val Verde	67	\$153,870.48	1	53	\$ 82,088.18		\$ 82,088.18	\$ 186,987.18	\$ 125,619.58
						33	476	\$1,316,159.00	\$155,998.21	\$1,472,156.21	\$ 2,988,821.18	\$ 790,481.25

	Original Cost	Trade-In value
5000 series switch	\$ 23,586.76	\$ 20,359.55
180g/2622 Switch	\$ -	\$ 1,353.58

Fair Market Value As Per Appraisal Report

5000 Series		2000/1900 Series	
WS-C2000	\$ 57,380	WS-C2822A	\$227,244
WS-X5008	\$ 157,816	WS-X2824	\$191,748
WS-X5008	\$ 18,907	WS-X2821	\$ 284
WS-X5212A	\$ 185,107	WS-X1912A	\$ 58,587
WS-X5010	\$ 69,091	WS-XC1900C	\$188,433
WS-X5011	\$ 21,289		
WS-C5008B	\$ 78,416		
WS-X5111	\$ 80,099		
Total FMV	\$ 671,885		\$544,294
FMV Per Item	\$ 20,360		\$ 1,354



# INVOICE

**SPECTRUM COMMUNICATIONS**  
**Cabling Services, Inc.**  
 226 N. Lincoln Avenue  
 Corona, CA 92882-1893  
 (909) 371-0549

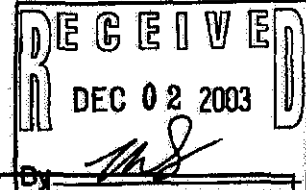
INVOICE NO. 5182003

INVOICE DATE: 12/02/2003

SIR NO. 0000639

**Sold To:**  
 Riverside Co. Office of Education  
 Attn. Tony Johnson  
 3939 Thirteenth Street  
 Riverside, CA 92502

**Ship To:**



Purchase Order No. N/A	CSR # N/A	Ship/Install Date 1999-2000	Via/Type Bid	Terms NET 30
Quantity	Description			Amount
	<p>Persuant to USAC's October 3, 2003 request for recovery of erroneously disbursed E-Rate funds related to equipment trade-in values for E Rate funding year 1999-2000, we are submitting the enclosed invoice to RCOE for the non-discounted services USAC has alleged are unpaid.</p> <p>See attachment for detail.</p>			
<p>Equipment title transfer upon receipt of full payment.</p> <p>All invoices that are past due are subject to finance charges at the rate of 1.5% per month.</p> <p>Federal Tax Identification No. 33-0662939</p> <p>California State Contractors License No. 713766 (C-7 Low Voltage)</p> <p>Oregon State Contractors License No. 93577 (Specialty Contractor)</p> <p>Small Business Administration Certifications No. 0006245</p> <p>Spectrum Communications is an "EQUAL OPPORTUNITY EMPLOYER"</p>		<p>Parts</p> <p>Labor</p> <p>Total</p> <p>Tax</p> <p>Freight</p> <p>Discount</p> <p>Balance Due</p>		<p>\$348,480.97</p>



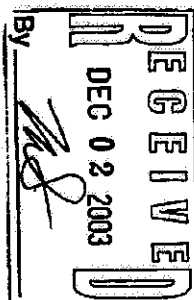
Appendix III

Analysis of Trade In received by Spectrum

Riverside County (BEN 143743)

BEN 143743, Form 471 #148309

BEN 143743, Form 471 #148309		Quantity Traded-In		July Valuation											
FRN#	Amount Paid	Amount Approved	School	Discount	Non-Discounted Portion	5000	Other	Trade-In Value	Paid In Cash	Total Payments		Maximum Commitment		Refund Due	Customer Match Required
										by Applicant	Amount	Amount	Amount		
299371	\$190,018.55	\$190,018.55	Alford	67	\$93,591.23	2	27	\$ 73,871.92		\$ 73,871.92	\$ 73,871.92	\$ 140,982.39	\$ 40,036.16	19,719.30	
299376	\$103,272.47	\$103,272.47	Banning	67	\$50,885.54	1	15	\$ 38,968.30		\$ 38,968.30	\$ 38,968.30	\$ 79,113.39	\$ 24,168.08	11,899.25	
299375	\$92,254.87	\$92,254.87	Beaumont	67	\$45,438.97			\$ -	\$ 45,438.69	\$ 45,438.69	\$ 45,438.69	\$ 92,284.31	\$ 0.98	0.28	
299374	\$174,888.18	\$174,888.18	Coachella	67	\$86,137.98			\$ -	\$ 86,137.92	\$ 86,137.92	\$ 86,137.92	\$ 174,888.08	\$ 0.08	0.04	
299386	\$335,968.71	\$335,968.71	Corona Norco	67	\$165,476.14	4	46	\$ 135,916.37		\$ 135,916.37	\$ 135,916.37	\$ 277,979.70	\$ 57,987.01	28,560.77	
299389	\$16,528.39	\$16,528.39	Desert Center	67	\$8,139.86			\$ -	\$ 8,139.87	\$ 8,139.87	\$ 8,139.87	\$ 16,528.40	\$ -	0.00	
299370	\$313,931.52	\$313,931.52	Desert Sands	67	\$154,822.99	4	42	\$ 131,501.14		\$ 131,501.14	\$ 131,501.14	\$ 266,987.18	\$ 46,944.38	23,121.85	
299395	\$212,053.73	\$212,053.73	Hemet	67	\$104,444.37	2	31	\$ 79,288.18		\$ 79,288.18	\$ 79,288.18	\$ 160,974.92	\$ 51,078.81	25,158.22	
299372	\$217,562.53	\$217,562.53	Jurupa	67	\$107,157.88	2	32	\$ 80,839.72		\$ 80,839.72	\$ 80,839.72	\$ 163,723.05	\$ 53,839.47	25,817.95	
299373	\$184,509.75	\$184,509.75	Lake Elsinore	67	\$90,877.94	2	28	\$ 72,518.38		\$ 72,518.38	\$ 72,518.38	\$ 147,234.25	\$ 37,275.50	18,359.57	
299387	\$44,070.38	\$44,070.38	Mentlee	67	\$21,708.31	0	8	\$ 10,828.47		\$ 10,828.47	\$ 10,828.47	\$ 21,985.08	\$ 22,085.30	10,877.84	
299382	\$395,168.80	\$395,168.80	Moreno Valley	67	\$194,635.38	5	53	\$ 165,053.20		\$ 165,053.20	\$ 165,053.20	\$ 335,108.01	\$ 60,088.79	29,582.18	
299381	\$125,307.85	\$125,307.85	Murieta	67	\$61,718.69	1	19	\$ 44,380.53		\$ 44,380.53	\$ 44,380.53	\$ 90,105.93	\$ 35,201.72	17,338.16	
299384	\$33,052.78	\$33,052.78	Norview	67	\$16,279.73			\$ -	\$ 16,279.73	\$ 16,279.73	\$ 16,279.73	\$ 33,052.79	\$ -	0.00	
299395	\$173,482.15	\$173,482.15	Palm Springs	67	\$85,451.36	2	24	\$ 68,811.25		\$ 68,811.25	\$ 68,811.25	\$ 141,737.96	\$ 31,784.17	15,840.11	
299383	\$88,748.08	\$88,748.08	Palo Verde	67	\$42,725.88	1	12	\$ 34,906.82		\$ 34,906.82	\$ 34,906.82	\$ 70,868.99	\$ 18,877.09	7,820.06	
299378	\$44,070.38	\$44,070.38	Perris Elementary	67	\$21,708.31	0	8	\$ 10,828.47		\$ 10,828.47	\$ 10,828.47	\$ 21,985.08	\$ 22,085.30	10,877.84	
299377	\$88,748.08	\$88,748.08	Perris High	67	\$42,725.88	1	12	\$ 34,906.82		\$ 34,906.82	\$ 34,906.82	\$ 70,868.99	\$ 15,877.09	7,820.06	
299353	\$246,431.28	\$246,431.28	Riverside USD	67	\$121,376.80	5	26	\$ 128,507.11		\$ 128,507.11	\$ 128,507.11	\$ 250,908.38	\$ -	0.00	
299388	\$38,561.58	\$38,561.58	Romoland	67	\$18,993.02	0	7	\$ 9,474.91		\$ 9,474.91	\$ 9,474.91	\$ 19,238.94	\$ 19,324.84	9,518.11	
299359	\$75,728.48	\$75,728.48	San Jacinto	67	\$37,299.11	1	10	\$ 32,199.90		\$ 32,199.90	\$ 32,199.90	\$ 65,372.72	\$ 10,355.77	5,100.60	
299379	\$179,000.95	\$179,000.95	Temecula	67	\$88,164.85	2	25	\$ 71,164.80		\$ 71,164.80	\$ 71,164.80	\$ 144,488.12	\$ 34,514.83	16,999.84	
299381	\$312,608.76	\$312,608.76	Val Verde	67	\$153,970.49	1	53	\$ 90,401.53		\$ 90,401.53	\$ 90,401.53	\$ 183,542.51	\$ 129,084.25	63,568.96	
		\$3,681,968.04			\$1,813,505.65	36	476	\$1,316,159.00	\$155,996.21	\$1,472,155.21	\$1,472,155.21	\$ 2,988,921.18	\$ 707,521.97	348,480.97	



# RCOE EXHIBIT F

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	File No. SLD-148309
	)	
	)	CC Docket No. 02-6
Request for Review of Decision of the Universal Service Administrator	)	
	)	FRN Nos. 299376, 299377, 299378,
	)	299379, 299381, 299382, 299355,
by	)	299356, 299359, 299361, 299363,
	)	299365, 299367, 299368, 299370,
Riverside County Office of Education Riverside, California	)	299371, 299372 and 299373
	)	

DECLARATION OF RINA M. GONZALES

John E. Brown, Bar No. 65322  
Jack B. Clarke, Jr., Bar No. 120496  
Cathy S. Holmes, Bar No. 188702  
Rina M. Gonzales, Bar No. 225103  
BEST BEST & KRIEGER LLP  
3750 University Avenue, Suite 400  
P. O. Box 1028  
Riverside, CA 92502  
(951) 686-1450

Attorneys for  
Riverside County Office of Education

April 26, 2004

DECLARATION OF RINA M. GONZALES

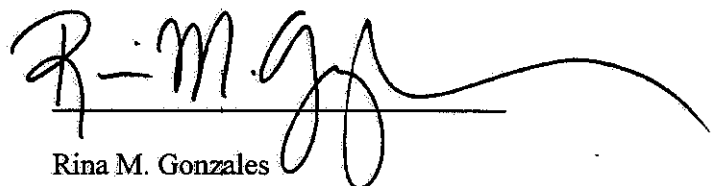
I, Rina M. Gonzales, declare as follows:

1. I am a member of the California Bar, and am an associate at the law firm of Best Best & Krieger LLP, attorneys of record for Riverside County Office of Education ("RCOE"). The matters set forth in this declaration are within my first hand knowledge and, if called as a witness, I would be competent to so testify.

2. On or about August 3, 2004, I received a voicemail message from Kristy Carroll ((202) 263-1603), Associate General Counsel for the Universal Service Administrative Company ("USAC") responding to my previous inquiry regarding whether USAC would be issuing an Administrator's Decision specifically addressing RCOE. I contacted Ms. Carroll after reviewing the Administrator's Decision on Appeal dated July 1, 2004. Ms. Carroll stated that USAC would be seeking recovery solely from Spectrum Communication. She also informed me that RCOE's letter dated December 2, 2003 was considered a request for confirmation that recovery for the alleged erroneously disbursed funds would be sought from Spectrum, the service provider, and not RCOE. As such, RCOE's letter was not considered as a separate appeal and USAC/SLD would not provide a decision letter to RCOE.

3. Based on Ms. Carroll's clarification, I then notified RCOE that its involvement in the appeal process was concluded.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Riverside, California, on April 26, 2005.

  
Rina M. Gonzales

**Denise Berger**

---

**From:** Rina M. Gonzales [Rina.Gonzales@bbklaw.com]

**Sent:** Wednesday, April 27, 2005 2:26 PM

**To:** CCBSecretary

**Subject:** Application for Review filing re File No. SLD-148309, CC Docket No. 02-6 (Email 3 of 4)

<<Scanjob\_20050426\_180301.PDF>>

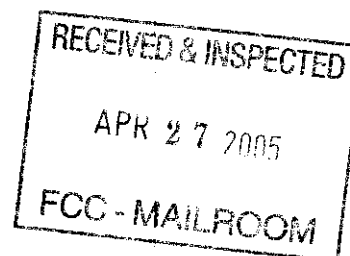
To Whom It May Concern:

Please find attached Riverside County Office of Education's Application for Review regarding File No. SLD-148309, CC Docket No. 02-6 (Email 3 of 4).

If you have any questions, please contact me directly at (951) 961-0335.

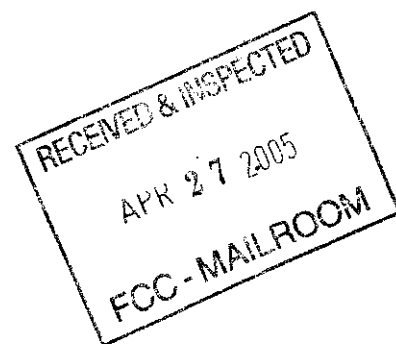
Rina M. Gonzales, Esq.  
Best Best & Krieger LLP

\*\*\*\*\*  
This email and any files transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and delete the email you received.  
\*\*\*\*\*



4/28/2005

# RCOE EXHIBIT B





Universal Service Administrative Company  
Schools & Libraries Division

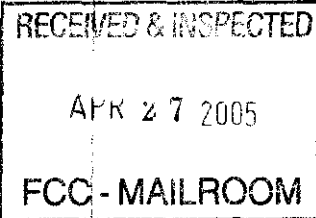
Administrator's Decision on Appeal - Funding Year 1999-2000

July 1, 2004

Pierre F. Pendergrass  
Spectrum Communications Cabling Services, Inc.  
226 North Lincoln Avenue  
Corona, CA 92882

Re: R O P Riverside County

Re: Billed Entity Number: 143743  
471 Application Number: 148309  
Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,  
299365, 299367, 299368, 299370, 299371,  
299372, 299373, 299376, 299377, 299378,  
299379, 299381, 299382



RECEIVED

JUL 06 2004

BEST BEST & KRIEGER

Your Correspondence Dated: December 2, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision concerning your appeal of SLD's Funding Year 1999 Recovery of Erroneously Disbursed Funds (REDF) Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one application number, please note that for each application an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,  
299365, 299367, 299368, 299370, 299371,  
299372, 299373, 299376, 299377, 299378,  
299379, 299381, 299382

Decision on Appeal: Denied in Full  
Explanation:

- You have stated on appeal that the SLD determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, in this case July 1, 1999. You also state that the SLD has relied upon an independent appraisal that Spectrum provided in order to determine the value of the equipment on July 1, 1999. You feel that the SLD

determination in this matter is misguided and SLD should cease its attempt to recover funds disbursed. You close by stating that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003, four years after the transaction. You add that although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the REDF Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

- Upon thorough review of the appeal letter and relevant documentation, we find that the facts support SLD's decision. An Internal Audit found that Spectrum Communications accepted a trade-in amount for the above funding requests. This is permitted under program rules because the original equipment was not purchased with program funds. After the Audit findings, the applicant argued that the calculation of the Fair Market Value (FMV) of the equipment should not be based on a 3-year straight-line depreciation schedule, and SLD accepted this presumption. However, the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment. Spectrum provided an independent appraisal indicating the FMV of the equipment as of July 1, 1999. SLD has accepted this appraisal and determined that the recovery amounts should be based on the date that Spectrum took possession of the equipment, but no earlier than the first day of the funding year. Although the agreement was executed in March 1999, you have indicated that the equipment was not transferred until after the start of Funding Year 1999. Therefore, it is appropriate for SLD to value the equipment as of July 1, 1999. In its role as program Administrator, USAC must ensure that there is no waste, fraud and abuse. Consequently, the appeal is denied.
- The FCC has directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute" and to pursue collection of any disbursements that were made in violation of a federal statute. *See In re Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 99-291 ¶ 7 (rel. October 8, 1999). The FCC stated that federal law requires the Commission to "seek repayment of erroneously disbursed funds" where the disbursements would violate a federal statute. *Id.* ¶¶ 7, 1. The FCC stated that repayment would be sought "from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism." *Id.* ¶ 9.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of



your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.,

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Mr. Elliott Duchon  
R O P Riverside County  
3939 Thirteenth Street  
Riverside, CA 92502

cc: Rina M. Gonzales  
Best Best & Krieger LLP  
3750 University Avenue  
Post Office Box 1028  
Riverside, CA 92502-1028

# RCOE EXHIBIT C



Box 125 - Correspondence Unit  
100 South Jefferson Road  
Whippany, NJ 07981  
Phone: 888-203-8100

R O P - RIVERSIDE COUNTY  
MR. ELLIOTT DUCHON  
3939 THIRTEENTH STREET  
RIVERSIDE, CA 92502

April 18, 2000

Re: Form 471 Application Number: 148309  
Funding Year: 07/01/1999 - 06/30/2000  
Billed Entity Number: 143743

Thank you for your 1999-2000 E-rate application and for any assistance you provided throughout our review. We have completed processing of your Form 471. This letter is to advise you of our decisions.

#### FUNDING COMMITMENT REPORT

From your Form 471, we reviewed row-by-row discount requests in Items 15 and 16. We assigned each row a Funding Request Number (FRN). On the pages following this letter, we have provided a Funding Commitment Report for each FRN in your application.

Attached to this letter you will find a guide that defines each line of the Funding Commitment Report and a complete list of FRNs from your application. The SLD is also sending this information to your service provider(s) so arrangements can be made to begin implementing your E-rate discount(s). We would encourage you to contact your service providers to let them know your plans regarding these services.

#### FOR QUESTIONS

If you have questions regarding our decisions on your E-rate application, please notify us in writing. Your questions should be sent to: Questions, Schools and Libraries Division, Universal Service Administrative Company, Box 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981.

#### FOR APPEALS

If you wish to appeal to the SLD, your appeal must be made in writing and received by us within 30 days of issuance of this letter as indicated by its postmark. In your letter of appeal, please include: correct contact information for the appellant, information on the Funding Commitment Decision you are appealing and the specific Funding Request Number in question, and an original authorized signature. Appeals sent by fax, e-mail or phone call cannot be processed. Please mail your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. You may also call our Client Service Bureau at 888-203-8100. While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC): FCC, Office of the Secretary, 445 12th Street SW, Room TW-A 325, Washington, D.C. 20554.

#### NEXT STEPS

Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step is to complete and submit the enclosed FCC Form 486. This Form notifies the SLD that you are currently receiving or have begun receiving services approved for discounts and provides certified indication that your technology plan(s) has been approved. As you complete your Form 486,

you should also contact your service provider to verify they have received notice from the SLD of your commitments. After the SLD processes your Form 486, we can begin processing invoices from your service provider(s) so they can be reimbursed for discounted services they have provided you. For further detailed information on next steps, please review all enclosures.

**NOTICE ON RULES AND FUNDS AVAILABILITY**

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued due to action or inaction, including but not limited to that by SLD, the Applicant, or service provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC) may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds.

The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

We look forward to continuing our work with you on connecting our schools and libraries together through communications technology.

Sincerely,  
Kate L. Moore  
President, Schools and Libraries Division, USAC

Enclosures

## EXPLANATION OF A FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each approved E-rate funding request from your application. We are providing the following definitions.

**FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each line completed in Items 15 and 16 of your Form 471 once an application has been processed. This number is used to report to applicants and vendors the status of individual discount requests submitted on a Form 471. Applicants and vendors learned about FRNs when they received their Receipt Acknowledgement Letter and must use these numbers when completing the Form 486 and Invoices. An FRN will never be longer than 10 digits. If a FRN is shorter than 10 digits, applicants are advised to add zeroes to the front of the numbers to reach 10 digits when filing post-commitment forms.

**FUNDING STATUS:** Each FRN will have one of six definitions: "Funded", "Denied", "Partially Funded", "Funds Exhausted", "Unfunded", or "As Yet Unfunded". An FRN that is "Funded" will be approved at the level that SLD determined is appropriate for that item. That will generally be the level requested by you unless the SLD determines during the application review process that some adjustment is appropriate, for example, a different discount percentage for that FRN than the Form 471 featured. A "Denied" FRN is one for which no funds will be committed, and the reason for that decision will be briefly explained in the "Funding Commitment Decision", and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation". In accordance with FCC program rules, FRNs are "Partially Funded" or "Unfunded", if the total amount of funds in the Universal Service Fund is insufficient to fully fund or fund all approved requests. If the Form 471 was received after all the funds in the Universal Service Fund were allocated and it was processed, the status will indicate "Unfunded - Funds Exhausted". "As Yet Unfunded" is a temporary status that would be assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for a particular service type at a particular discount level. For example, if your application included both telecommunications services and internal connections, you might receive a letter with our funding commitment for your telecommunications requests and a message that your internal connections requests are "As Yet Unfunded". You would then receive a later letter regarding our funding decision on your internal connections requests.

**SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to vendors seeking payment from the Universal Service Fund for participating in the universal service support programs. A SPIN contains 9 digits and should be included by applicants on their completed Form 471 applications. A SPIN is also used to verify delivery of services and to arrange for payment.

**SERVICE PROVIDER NAME:** The legal name of the service provider.

**PROVIDER CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.

**SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.

**EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT:** The first possible date of service for which the SLD will reimburse service providers for the discounts for the service. Note: If the actual service start date provided on a Form 486 is later than this date, the actual service start date set forth in the Form 486 will be the effective date of the discount.

RCOE  
Exhibit C  
Page 3 of 9

**CONTRACT EXPIRATION DATE:** The date the contract expires. This will be present only if a contract expiration date was provided on Form 471. This is not applicable for tariff services.

**SITE IDENTIFIER:** This will appear only for FRNs listed in Item 16 of your Form 471. For public schools, the 12-digit NCES code you listed in Item 14 for this school site will appear here. If there is no NCES Code for an FRN in Item 16, the SLD-assigned entity number will appear here.

**PRE-DISCOUNT COST:** Amount in Column 10 of Item 15/16, Form 471, as determined through the application review process. Please note that, during the Problem Resolution process at SLD, the amount in Col. 10 of Item 15/16 may have been corrected to conform to the information provided about Service Start Date and Monthly Costs.

**DISCOUNT PERCENTAGE APPROVED BY THE SLD:** This is the discount rate that the SLD has approved for this service.

**FUNDING COMMITMENT DECISION:** This represents the total amount of funding that the SLD is now reserving to reimburse service providers for the discounts for this service through June 30, 2000. This figure may be different from the Estimated Total Annual Pre-Discount Cost (Col. 10 of Item 15/16) times the Percentage Discount (Col. 11 of Item 15/16) in the 471 application. It may be lower because of an adjustment determined appropriate by the SLD, such as of the discount percentage, or a denial of discounts and, if so, the accompanying comment will explain this difference. The difference may also reflect a reduction from the request level made necessary by overall funding limitations, in which case the "Funding Status" above will indicate "Partially Funded" or "Unfunded". Whatever amount is listed here, it is important that you and the service provider both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts on only eligible, approved services actually rendered.

**FUNDING COMMITMENT DECISION EXPLANATION:** This entry may appear to amplify the comment in the "Funding Commitment Decision", if the discount request for this service is denied for reasons other than "Unfunded" or if the SLD determined that some adjustment to the request level was appropriate.

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299353      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: RUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 04/30/2001  
Pre-discount Cost: \$367,807.88  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$246,431.28 - 471 approved as submitted

Funding Request Number: 0000299354      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: NVUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 04/30/2001  
Pre-discount Cost: \$49,332.51  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$33,052.78 - 471 approved as submitted

Funding Request Number: 0000299355      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: PSUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 04/30/2001  
Pre-discount Cost: \$258,943.51  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$173,492.15 - 471 approved as submitted

Funding Request Number: 0000299356      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: CNUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$501,442.85  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$335,966.71 - 471 approved as submitted

Funding Request Number: 0000299359      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: SJUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$113,027.59  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$75,728.49 - 471 approved as submitted



FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299361      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: VVSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$466,577.26  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$312,606.76 - 471 approved as submitted

Funding Request Number: 0000299363      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: PVUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$129,471.76  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$86,746.08 - 471 approved as submitted

Funding Request Number: 0000299365      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: HUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$316,498.11  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$212,053.73 - 471 approved as submitted

Funding Request Number: 0000299367      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: MUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$65,776.68  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$44,070.38 - 471 approved as submitted

Funding Request Number: 0000299368      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: RSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$57,554.60  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$38,561.58 - 471 approved as submitted

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299369      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: DCUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$24,666.26  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$16,526.39 - 471 approved as submitted

Funding Request Number: 0000299370      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: DSUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$468,554.51  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$313,931.52 - 471 approved as submitted

Funding Request Number: 0000299371      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: AUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$283,609.77  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$190,018.55 - 471 approved as submitted

Funding Request Number: 0000299372      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: JUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$324,720.19  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$217,562.53 - 471 approved as submitted

Funding Request Number: 0000299373      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: LEUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$275,387.68  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$184,509.75 - 471 approved as submitted

**FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309**

Funding Request Number: 0000299374      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: CUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$261,024.12  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$174,886.16 - 471 approved as submitted

Funding Request Number: 0000299375      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: BUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$137,693.84  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$92,254.87 - 471 approved as submitted

Funding Request Number: 0000299376      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: BANUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$154,138.01  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$103,272.47 - 471 approved as submitted

Funding Request Number: 0000299377      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: PJUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$129,471.76  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$86,746.08 - 471 approved as submitted

Funding Request Number: 0000299378      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: PELEM  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$65,776.68  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$44,070.38 - 471 approved as submitted

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299379      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: TUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$267,165.60  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$179,000.95 - 471 approved as submitted

Funding Request Number: 0000299381      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: MUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$187,026.35  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$125,307.65 - 471 approved as submitted

Funding Request Number: 0000299382      Funding Status: Funded  
SPIN: 143010165      Service Provider Name: Spectrum Communications  
Provider Contract Number: JUSD  
Services Ordered: Internal Connections (Shared)  
Earliest Possible Effective Date of Discount: 07/01/1999  
Contract Expiration Date: 06/30/2001  
Pre-discount Cost: \$589,804.18  
Discount Percentage Approved by the SLD: 67%  
Funding Commitment Decision: \$395,168.80 - 471 approved as submitted

**RCOE  
EXHIBIT D**

# BEST BEST & KRIEGER LLP

A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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ORANGE COUNTY  
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SACRAMENTO  
(916) 325-4000

December 2, 2003

Letter of Appeal  
Schools and Libraries Division  
Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

Re: Billed Entity Name: Riverside County Office of Education  
Billed Entity Number: 143743  
E-Rate Funding Year 1999-2000; FCC Form 471 Application Number: 148309  
Schools and Libraries Division letter dated: October 3, 2003

Dear School and Libraries Division:

The law firm of Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in this matter and is filing this letter of appeal on its behalf. This appeal concerns the letter sent to RCOE on October 3, 2003, from the Universal Service Administrative Company ("USAC"), Schools and Libraries Division ("SLD").<sup>1</sup> The SLD letter states that SLD determined that funds were disbursed in error. The letter asserts that RCOE did not pay a portion of the discounted charges for which it was responsible, and demands reimbursement of a portion of the moneys paid to Spectrum Communications Cabling Services, Inc. ("Spectrum"), the service provider for the contracts in question. SLD's decision is based on its position that trade-in equipment was over-valued, in part because SLD utilizes a later trade-in date than that used by Spectrum when it valued the equipment. The SLD decision demands the repayment of \$707,521.34 which was allegedly erroneously disbursed for the benefit of 16 individual school districts. A true and correct copy of the letter decision from which RCOE appeals is attached hereto as Exhibit "A." RCOE appeals on the ground that any moneys found due and owing to USAC, SLD should be recovered from Spectrum, not RCOE.

RCOE is filing this appeal because SLD sent a copy of its decision letter to RCOE, and that letter did not identify the party from which SLD was proposing to recover the allegedly wrongfully disbursed funds. The letter does not demand reimbursement from RCOE or offer any authority

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<sup>1</sup> RCOE is informed and believes that this same letter and request from the SLD was also sent to Spectrum Communications Cabling Services, Inc. because Spectrum was the Service Provider for RCOE and received direct payment from the USAC, SLD for the funding year at issue.

Letter of Appeal  
Schools and Libraries Division  
December 2, 2003  
Page 2

supporting an attempt to recover any portion of the allegedly erroneously disbursed funds from RCOE. RCOE requests that the SLD confirm that it is not seeking any reimbursement from RCOE.

The person who can most readily discuss this appeal with the SLD is:

John E. Brown  
Attorney for Riverside County Office of Education  
Best Best & Krieger LLP  
3750 University Avenue, Suite 400  
Riverside, CA 92507  
Phone: (909) 686-1450  
Facsimile: (909) 686-3083  
E-mail: [JEBrown@bbklaw.com](mailto:JEBrown@bbklaw.com)

#### **Factual Background**

RCOE is a service agency which provides support for 23 school districts within Riverside County. As such, RCOE may serve as an agent for the school districts in acquiring federal and state funding.

In late 1999, RCOE filed a Federal Communications Commission ("FCC") Form 470 application with USAC as a consortium, on behalf of its school districts, for E-rate Year 2 funding. The fiscal year for which RCOE sought funding by that application was 1999-2000. After RCOE's FCC Form 470 application was approved, it was posted on the Internet as required by 47 C.F.R. section 54.504.

RCOE selected Spectrum from the interested vendors to be the service provider for the county school districts. The decision to select Spectrum was based, in part, on the fact that Spectrum had worked with many of the school districts as part of the county's "Riverlink Project."<sup>2</sup> Based on its work in 1998 on the Riverlink Project, in which Spectrum supplied equipment to school districts, Spectrum knew of the existing equipment and technology needs of many of the school districts. The decision to select Spectrum also was based, in part, on the fact that Spectrum had experience as an E-rate service provider. Based on that experience, Spectrum counseled RCOE and the school districts that the districts could trade-in, and Spectrum would accept, existing equipment<sup>3</sup> for the new equipment.

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<sup>2</sup> The RCOE Superintendent's goal of the Riverlink Project was to get a majority of Riverside County school classrooms connected to the Internet.

<sup>3</sup> Any equipment traded-in was not purchased with Universal Service Funds (i.e., non-E-rate funded equipment.).

## Letter of Appeal

Schools and Libraries Division

December 2, 2003

Page 3

In or around January 2000, RCOE took the next step toward securing E-rate Year 2 funding and submitted a consortium application – FCC Form 471 – for fiscal year 1999-2000 to the USAC, SLD on behalf of 23 school districts. This application included the estimated costs for each district's technology installation. The estimated costs in the FCC Form 471 were derived from meetings between RCOE, Spectrum and the school district Technology Directors or district employee(s) with responsibility for technology. At the meetings, each district explained its present technology status to Spectrum so that Spectrum could estimate the district's equipment needs.

On or about April 18, 2000, RCOE received a Funding Commitment Decision Letter from USAC which indicated that RCOE's FCC Form 471 application was approved as submitted. The Funding Commitment Decision Letter indicated that each district would be responsible for paying 33% of the technology installation, while the other 67% would be paid directly to the identified service provider – Spectrum – by USAC.

Sixteen of RCOE's school districts took advantage of Spectrum's offer to credit trade-in equipment value to meet some or all of their 33% match obligation. Those 16 school districts are now the subject of SLD's request for recovery of allegedly erroneously disbursed funds. The 16 school districts are as follows: (1) Alvord Unified School District; (2) Banning Unified School District; (3) Corona/Norco Unified School District; (4) Desert Sands Unified School District; (5) Hemet Unified School District; (6) Jurupa Unified School District; (7) Lake Elsinore Unified School District; (8) Menifee Unified School District; (9) Moreno Valley Unified School District; (10) Murrieta Valley Unified School District; (11) Palm Springs Unified School District; (12) Palo Verde Unified School District; (13) Perris School District; (14) Romoland School District; (15) Temecula Valley Unified School District; and (16) Val Verde Unified School District.<sup>4</sup> All other districts that participated in Year 2 did not trade-in equipment, but instead made a cash payment for their 33% match amount to Spectrum.

Although the application was filed by RCOE, each school district was individually responsible for management of the funding and program implementation with the district schools. Each school district dealt directly with Spectrum to identify its technology needs and to identify equipment to be traded in. Each school district separately negotiated the trade-in value, based in large part on Spectrum's expertise and knowledge in the technology industry and proposed trade-in valuations. Each school district separately issued purchase orders to Spectrum, using California's Multiple Award Schedule ("CMAS") contracting procedure, to obtain the services and equipment ultimately ordered. Given the very short time frame available to proceed with the project for the school districts, RCOE and the school districts had to rely on Spectrum's experience implementing the district's technology goals, awareness of the districts' existing technology, knowledge of the fair market value of that

---

<sup>4</sup> RCOE was informed that Corona/Norco Unified School District and Jurupa Unified School District would both trade in old equipment and make a cash payment to meet their 33% match amounts.



**Denise Berger**

**DOCKET FILE COPY ORIGINAL**

**From:** Rina M. Gonzales [Rina.Gonzales@bbklaw.com]

**Sent:** Wednesday, April 27, 2005 3:22 PM

**To:** CCBSecretary

**Subject:** Application for Review filing re File No. SLD-148309, CC Docket No. 02-6 (Email 4a(3) of 4)

<<Scanjob\_20050427\_221026.pdf>>

To Whom It May Concern:

Please find attached Riverside County Office of Education's Application for Review regarding File No. SLD-148309, CC Docket No. 02-6 (Email 4a(3) of 4).

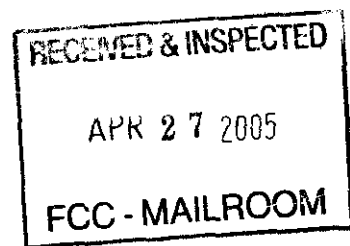
If you have any questions, please contact me directly at (951) 961-0335.

Rina M. Gonzales, Esq.  
Best Best & Krieger LLP

\*\*\*\*\*  
This email and any files transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and delete the email you received.  
\*\*\*\*\*



4/28/2005

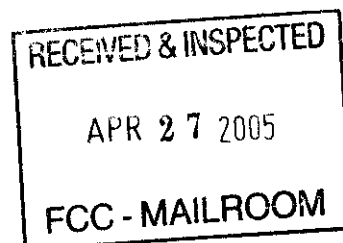


### **Exhibit 3**



**SPECTRUM COMMUNICATIONS**  
**CABLING SERVICES, INC.**

Date: March 15, 2003  
To: Ed Falkowitz  
Schools and Libraries Division  
From: Robert Rivera



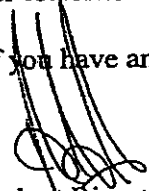
Subject: Riverside (Ben 143743) FY 1999- Equipment Trade-In

Attached is the Appraisal report for the equipment received as trade in for the balance due from customers within the Riverside consortium. We have had the equipment appraised as of March 1, 1999 which is the month the agreement between the Riverside consortium and Spectrum Communications was negotiated and the Form 471 submitted to the SLD. In addition, as you requested we had the equipment appraised as of July 1, 1999. Using these appraisals, below is a summary table of the results of the transaction:

	<u>March 1, 1999</u>	<u>July 1, 1999</u>
Equipment Appraised Value (per report)	\$1,859,321	\$1,316,159
Cash Received	<u>155,996</u>	<u>155,996</u>
Total	\$2,015,317	\$1,472,155
Customer Match	<u>1,813,506</u>	<u>1,813,506</u>
Difference	\$ 201,811	\$ (341,351)

As shown above; at the time Spectrum Communications entered into the transaction the value of the equipment was well above the customer match required for E-rate discounts. Given the program rules and guidelines available at the time the transaction was agreed upon, we believe using the contract date for valuation was a prudent and reasonable basis for establishing value when consummating this transaction.

If you have any questions, please call me.

  
Robert Rivera  
Spectrum Communications  
(909) 371-0549

# **Appraisal Report**

**For**

**Spectrum Communications**

**By**

**DMC Consulting Group  
Newport Beach, CA**

**March 2003**

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## **Appraisal Report**

DMC Consulting Group (DMC) presents the following summary desktop appraisal as an *opinion of value* of high-tech Cisco network communications equipment sold to Riverside County in March 1999. The following is a list of the documents submitted to DMC for review by Spectrum Communications.

- Summarized equipment spreadsheet for the Cisco Equipment

The portfolio was appraised for End-User Fair Market Value for March 1999 and July 1999. The listing of the equipment and the forecast appear as Exhibit B and the end of this appraisal report.

### ***Overview of Report***

This appraisal report identifies the assets in question and determines the various Fair Market Values for March 1999 and July 1999. Adherence to the code of ethics and the requirement and standards of Uniform Standards of Professional Appraisal Practices and the conduct of an appraiser as a member of the American Society of Appraisers is strictly followed for the creation of this report.

### ***Purpose and Use of the Appraisal***

The purpose of this appraisal is to provide an *independent valuation opinion* with regard to the Fair Market Values at the two dates mentioned. This was done through the use of researching the equipment, using reports available in the marketplace and applying my 17 years of valuing computer equipment to arrive at the *opinion of value* presented. This report should be used as an *opinion of value* as of the appraisal dates for the assets listed.

The End-User value is the price the user would pay to a vendor, computer broker or lessor for the equipment in an arms length contract subject to the definition of Fair Market Value (FMV) listed later in this report. Cisco does not charge the end-user for freight and installation of this type of equipment. The End-User valuation represents on average what the user can expect to pay for like equipment in the specific timeframe requested.

### ***Objective and Valuation Date of Appraisal***

The objective is to give an opinion of Fair Market Value as of March 1999 and July 1999 for the equipment in the detail listing in Exhibit B.

### ***Definition and Premise of Value***

"Fair Market Value - Installed" (FMV) is defined as the price that the equipment should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

For purposes of this valuation freight and installation are not included in the value of the equipment.

### ***Description of Subject Computer Assets***

The subject computer assets are listed in Exhibit B. *Portfolio Analysis - Detail*.

There was no inspection of the assets listed. It is assumed that:

- *The equipment was under a normal maintenance agreement from the manufacturer since it was first installed.*
- *The equipment was up to its current engineering level.*
- *The equipment was in a proper room environment and subject only to the normal wear and tear of such use.*
- *The equipment was used for normal business applications.*

### ***Approaches to Value***

The generally accepted approaches to tangible personal property valuation include the income approach, cost approach and the market approach. The following outlines these various approaches to value.

#### ***Income Approach***

The income approach considers value in relation to the present worth of anticipated future benefits derived from ownership and is usually measured through the capitalization of a specific



level of income, (i.e. net income or net cash flow). The net income or net cash flow is projected over an appropriate period and is then capitalized at an appropriate capitalization or discount rate.

While the cost approach and the market approach are readily applicable in many situations of computer equipment valuations, the income approach is less frequently applied since it is usually difficult to isolate a unique income stream.

#### *Cost Approach*

The cost approach is that approach which measures value by determining the current cost of an asset and deducting for the various elements of depreciation, physical deterioration and functional and economic obsolescence. This approach is based on the proposition that the informed purchaser would pay no more for computer equipment than the cost of producing substitute equipment with the same utility as the subject asset from the same manufacturer.

The main definitions of cost are reproduction cost and replacement cost. Reproduction cost considers the construction of an exact replica of the asset. Replacement cost considers the cost to recreate the functionality or utility of the subject asset.

The cost approach commonly measures value by estimating the current cost of a new asset, and then deducts value for various elements of depreciation, including physical deterioration and functional and external obsolescence to arrive at "depreciated cost new". This "cost" may be either reproduction or replacement cost. The logic behind this method is that an indication of value of the asset is its cost (reproduction or replacement) less a charge against various forms of obsolescence such as functional, technological and economic as well as physical deterioration if any.

Thus:	Current Cost of Replacement or Reproduction New
Less:	Physical Deterioration
Less:	Functional Obsolescence
Less:	External Obsolescence
Results in:	Fair Market Value

The availability and cost of the substitute asset is directly affected by shifts in the supply and demand of the utility. Utility may be measured in many ways including functionality, desirability, etc. Costs typically include the cost of all material, labor, overhead, and entrepreneurial profit (or return on the investment in the subject tangible personal property).

#### *Market Approach*

The logic behind the market approach for computer equipment is that a prudent investor can go to the marketplace and purchase an exact copy of the asset with the same features and/or

functionality built by the same manufacturer. Analysis of recent sales and/or asking prices of comparative computer assets are the basis used to establish market values for current fair market value of used equipment.

In the market approach or sometimes also called the "sales comparison" approach, recent sales and offering prices of exact copies and/or similar assets are gathered to arrive at an indication of the most probable selling price of the asset being appraised. The basic procedure is to gather data, determine the features to be compared, and apply the results to the subject. Along with this data and historical data about the same product, a depreciation curve can be established to predict a residual value for this and similar products.

The market approach is considered to be the best method to estimate the current and future value of computer assets, especially when an actual secondary market exists and there is data available to provide a good indicator of value for the asset. There is enough data available from marketplace to provide a good basis for defining value for the assets under question.

#### *Appropriate Method - Methodology*

Of the various "Approaches to Value" available, the *Market Approach is the appropriate method* of valuing this portfolio of equipment.

The Income Approach considers value in relation to the present worth of future benefits of ownership. It is not usually applied to individual items of equipment since it is difficult, if not impossible, to identify individual income streams. If you assemble a group of individual machines to produce a product, in aggregate, they generate income for the business. So by using an income approach, we could value the aggregation of assets that generate this income. However, it is very difficult to gather and isolate the appropriate information needed for this type of appraisal.

The Cost Approach is based on the proposition that the informed purchaser would pay no more for a property than the cost of reproducing a substitute property from the same manufacturer with the same utility as the subject property. It considers that the maximum value of a property to a knowledgeable buyer would be the amount currently required to construct purchase a new asset of equal utility. This approach should not be used because the cost to Reproduce and/or to develop and re-engineer an exact Replacement would be more than a unit purchased in the secondary marketplace, plus the identification of the specific percentages to apply for physical, functional and economic depreciation.